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90-1349

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

SONNY B. WEBB,

Petitioner,

— v.

ENVIRONMENTAL PROTECTION AGENCY
LEE M. THOMAS (WAS), WILLIAM REILLY (NOW)
ADMINISTRATOR

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

SONNY B. WEBB, PRO SE
PETITIONER FOR PETITIONER
1108 Southern Drive
Chapel Hill, N.C. 27516
(919) 968-8594 (residence)
(919) 541-1548 (work)

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QUESTIONS PRESENTED

1. Was John R. Jefferies's affidavit misapprehended by district court, if so, was Court of Appeals for the Fourt Circuit erroneous by affirming court's dismissal (pre-1985 claims)?

2. Did Court of Appeals for the Fourth Circuit erred by not finding the U. S. District Court for the Middle District of North Carolina in error by court's dismissal of Sonny B. webb's pre-1985 claims in light of the ruling of the Supreme Court of the United States on the same issue and in light of all the rest of evidence provided by the plaintiff?

3. Did Court of Appeals for the Fourth Circuit fail to allow justice in this case when same court of appeals denied hearing Sonny B. Webb's PETITION FOR REHEARING and when same court of appeals denied Sonny B. Webb's PETITION FOR REHEARING in banc?

4. Was Court of Appeals for the Fourth Circuit proper in denying Sonny B. Webb's bill of cost, district court was in error?

TABLE OF CONTENTS

Qestions Presented ---------- 1

Table of Contents ---------- ii

Table of Authorities ---------- iii

Official and Unofficial Reports of Opinions Delivered Referenced --------- iv

Statement of the Grounds on which the Jurisdiction of this Court ---------- 1

The Constitution and Provisions, Treaties Status, Ordinances, and Requlations Involved in the Case ---------- 2

Statement of Case ---------- 2

Argument Amplifying the Reasons Relied on for the Allowances of the Writ -------- 6

Appendix ---------- 9

TABLE OF AUTHORITIES

Baldwin County Welcome Center v. Brown, 466 U. S. 147, 104, 104 S. Ct. 1723, 80 L. Ed. 2d. 196 (1984), page 7.

Zipes v. Transworld Airlines, Inc., 455 U. S. 385, 393, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982), page 7.

Rule 39(a), Rules of Appellant Procedure (p. 7).

Rule 40, Rules of Appellant Rrocedure (p. 7).

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS REFERENCED

Webb v. EPA, No. 90-2106 (4th Cir. Sept. 27, 1990)

Case No. C-89-18-D (Judgment/Memorandum Opinion Entered April 27, 1990).

Court of Appeal's Denial Opinion (Dated October 23, 1990.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT

Pursuant to Rule 10 of the Rules of the Supreme Court, this petition for a writ of certiorari is submitted and filed with the Supreme Court of the United States.

On April 27, 1990, U. S. District Court for the Middle District of North Carolina entered JUDGMENT/MEMORANDUM OPINION (case dismissed with prejudice); plaintiff (Sonny B. Webb) appealed to United States Court of Appeals for the Fourth Circuit by NOTICE OF APPEALS dated May 24, 1990; by unpublished per curiam opinion, on September 27, 1990, Court of Appeals for the Fourth Circuit

affirmed in part, vacated in part, and remanded; for part affirmed, plaintiff - appellant (Sonny B. Webb) filed a "Petition for Rehearing" by U. S. Express Mail on October 9, 1990; same court of appeals denied hearing Sonny's "Petition For Rehearing" and denied rehearing in banc. Further, Sonny B. Webb was denied entire bill of costs dated/ submitted October 9, 1990.

It is believed that Rule 10.1.(a) and/or 10.1.(c) is the jurisdiction to review the decree or judgment in question.

THE CONSTITUTION PROVISION, TREATIES, STATUS, ORDINANCES, AND REGULATIONS INVOLVED IN THIS CASE

Sonny B. Webb instituted this case action under Title VII of the 1964 Civil Rights Act and/or 42 U. S. C. s 2000 e et seq, alleging race, religion, and handicap discrimination (employment/employee).

STATEMENT OF THE CASE

Following the completion of discovery

period herein this case, defendant filed "Motion To Dismiss" dated December 29, 1990, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss only portions of plaintiff's complaint dated/filed January 6, 1989; portions to dismiss were addressed by defendant as:

> pursuant to Rule 12(b), Fed. R. P., to dismiss for failure to exhaust administrative remedies all portions of the complaint relating to matters occurring prior to October 9, 1985. The defendant further moves pursant to Rule 12(b) to dismiss all claims for complensatory and punitive damages and for back pay prior to November 8, 1983, for failure to state a claim upon which relief may be granted.

Plaintiff's response dated January 22, 1990 pleaded to have defendant's motion to dismiss to be denied or deferred and/or set aside because of plaintiff's provided evidence (John R. Jefferies' affidavit, Sonny B. Webb's affidavit, the Recommended Decision, Findings of Fact, and Conclusions of Law issued January 27, 1988 in EEOC Complaint No. 045-87-X0045, EPA Case No. 86-0020-N.C., and the projected/promised affidavit/statement of Mr. Isiah O. Gatling.

Consequently, the district court ORDERED, ADJUDGED, AND DECREED that defendant's motion to dismiss is GRANTED to all claims, and dismissed with prejudice this case (See the 27th April 1990 Judgment/Memorandum Opinion).

From same Judgment/Memorandum Opinion dated April 27, 1990, plaintiff gave "Notice of Appeal" on May 24, 1990 to the United States Court of Appeals for the Fourth Circuit and submitted plaintiff's "Docketing Statement" on June 2, 1990. On the evening of July 7, 1990, appellant received a certified letter (reference to No. 90-2106) from same U. S. Court of Appeals, which stated that the June 29, 1990 (required date for appellant's informal brief) had expired and that Sonny B. Webb (appellant) had until July 20, 1990 to submit or file appellant's brief (informal). In reply to certified letter dated July 5, 1990, on July 9, 1990, the appellant contacted by phone the office of the clerk, Court of Appeals, informed same clerk's office that the appellant has never been informed or provided

any notice of the record on appeal filed with court of appeals and nor has appellant received any previous letter and/or notice to this effect from court of appeals, and requested copies of the office of the Clerk's file copy of the form (informal brief). In this existing situation, appellant prepared a brief (made as a supplemental brief thereto informal brief) and prepared "Motion For An Extension Of Time For filing Informal Brief." By ORDER dated July 18, 1990, Appeals Court "ORDERED that the appellant's brief is hereby filed, as submitted."

On September 27, 1990, the U. S. Court of Apeals for the Fourth Circuit decided appellant's appeal; appeals court "Affirmed in part, vacated in part, and remanded by unplished per curiam opinion." Part affirmed by court of appeals agreed with court's dismissal of claims occuring before 1985. Beleiving that material fact or law was overlooked in the decision, Sonny Webb filed a petition for rehearing and suggested, if proper, rehearing in banc. Same "Petition For

Rehearing" (dated/submitted 9th October, 1990 by U. S. Express Mail) was denied, plus rehearing in banc was denied, both denied on October 23, 1990 by court of appeals. Also, same court of appeals (on 10/27/90) denied Sonny B. Webb's bill of cost encountered in appellant's appeal. To this, Sonny B. Webb hereby petitions for a writ of certiorari to the Supreme Court of the United States.

ARGUMENT AMPLIFYING THE REASONS RELIED ON THE ALLOWANCE OF THE WRIT

Sonny B. Webb, pro se, hereby submits and files this petition for a writ of certiorari, strongly believing that the United States Court of Appeals for the Fourth Circuit has overlooked material fact in its decision by agreeing with district court's dismissal of plaintiff's claims relating to events prior to 1985; thus affirming a decision in conflict with rulings up held by the Supreme Court of the United States.

It appears that the involved district court not only misapprehened John R. Jefferies'

affidavit to reach the dismissal of the case, but also stated that "the rational being that the exhaustion of administrative remedies is a jurisdictional prerequisite to the maintenance of a judicial action." The Supreme Court of the United States has held that compliance with the filing requirements of EEOC "is not a jurisdictinoal prerequisite to suit in federal court but a requirement that like a statute of limitations is subject to waiver, estoppel and equitable tolling." See Zipes v. Transworld Airlines, Inc., 455 U. S. 385, 393, 102 S. Ct. 1127, 71 L. Ed. 2d 234 (1982). See also, Baldwin County Weclome Center v. Brown, 466 U.S. 147, 104 S. Ct. 1723, 80 L. Ed. 2d. 196 (1984).

Also, Sonny B. Webb believes that Sonny's rights to a rehearing on the part of the court of appeals' decision affirmed and to some cost denied by court of appeals have been violated. See Rule 39(a), Rules of Appellant Procedure and Rule 40, Rules of Appellant Procdure.

Respectfully submitted this 22nd day

of January, 1991.

Sonny B. Webb

Sonny B. Webb, pro se
Petitioner for Petitioner
1108 Southern Drive
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APPENDIX

(i) Judgment/Memorandum Opinion Entered April 27, 1990.

WEBB v EPA, No. 90-2106 (4th Cir. Sept. 27, 1990).

Denial Opinion, No. 90-2106 (4th Cir. Oct. 23, 1990).

(ii) Recommended Decision, Findings of Fact, and Conclusions of Law issued January 27, 1988, (Excerts from EEOC Complaint No. 045-87-X0045, EPA Case No. 86-0020-N.C)

CERTIFICATION OF SERVICE

I, Sonny B. Webb, hereby certify that I served true copies of the foregoing PETITION FOR WRIT OF CERTIORARI upon Harry L. Hobgood, counsel of record for the defendant, and have served true copies upon the Solicitor General, by placing said copies in envelopes with first-class postage prepaid and by depositing each envelope with same true copies to each in a United States post office, addressed to each as follows:

U. S. Department of Justice
Assistant United States Attorney
ATTN: Harry L. Hobgood
Middle District of North Carolina
Post Office Box 1858
Greensboro, North Carolina 27402

Solicitor General
Department of Justice
Washington, D. C. 20530

Phone number for counsel of record for the defendant is (919) 333-5351

This the 22nd day of January, 1991.

Sonny B. Webb

Sonny B. Webb